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Current Topics.

Doctors' Commons.

THE disastrous fire in the City last week, demolishing, as it did, some of the last surviving buildings associated with what were known as Doctors' Commons, naturally revives memories of the days, anterior to the remodelling and eventual consolidation of the various tribunals in the Supreme Court of Judicature. That portion of the City was then sacred to those specialising in the subjects of probate, divorce and admiralty—a collocation of subjects which a recent writer has well described as “a heterogeneous assortment of matters.” This, however, was due to the circumstance that the systems administered were all founded on the Roman law—civil and canon, which also accounted for the fact that the practitioners were often spoken of as “civilians.” Readers of “*David Copperfield*,” with its minute topographical details of this old part of the City, will recall that when the hero of the story is to be launched in life and it is arranged that he shall be article to Mr. Wickfield, but knowing nothing of what it really meant, asked his friend Steerforth what a “proctor” was, he was told that he was “a monkish kind of attorney”—no bad description of the pundits whose work lay in the old ecclesiastical and admiralty courts.

The Prevention of Fraud (Investments) Act, 1939.

THE contents of an announcement recently made by the Board of Trade relative to the Prevention of Fraud (Investments) Act, 1939, should be briefly indicated. Under s. 14 the Board has, by order, declared the following bodies of persons carrying on in Great Britain the business of dealing in securities to be recognised stock exchanges or recognised associations of dealers in securities for the purposes of the Act: The Aberdeen, Birmingham, Bradford, Bristol, Cardiff, Dundee, Edinburgh, Glasgow, Greenock, Halifax, Huddersfield, Leeds, Liverpool, Manchester, Mincing Lane, Newcastle-upon-Tyne, Newport (Mon), Nottingham, Oldham, Sheffield and Swansea Stock Exchanges; and the Provincial Brokers' Stock Exchange, and the Association of Stock and Share Dealers. The Stock Exchange, London, is a recognised stock exchange for the purposes of the Act. Under ss. 7 and 20 of the Act, the Board has made rules (S.R. & O., 1939,

No. 787, H.M. Stationery Office, price 2d. net) which contain provisions relating to offers of securities in writing, calls made by licensed dealers for the purposes of dealing in securities, the particulars to be included in contract notes, margin and other speculative transactions, and the sale of securities to the public by instalments. These rules will come into force on the appointed day, the date of which is to be determined later. Finally, under ss. 3 and 20 of the Act, the Board has made regulations (S.R. & O., 1939, No. 794, H.M. Stationery Office, price 7d. net) as to the manner in which applications should be submitted, and as to fees. Applicants for licences, to take effect as from the appointed day, are required to lodge their applications with the Comptroller of the Companies Department, Board of Trade, 4, Central Buildings, Matthew Parker Street, Westminster, S.W.1, not later than 15th September, 1939; and it is stated that persons wishing to be supplied with forms of application should apply in writing as soon as possible to the Comptroller stating the number of the principals' and representatives' licences respectively for which they intend to apply. The prescribed fees for a principal's licence are £25 or £10, according to whether the holder is a corporation, or an individual or partner; and the fee for a representative's licence is £2.

The Criminal Justice Act.

SOME interesting observations were made by Mr. E. C. GATES, chairman of the Manchester Juvenile Court, at the summer school held at Oxford during the past week, of the Howard League for Penal Reform, when various aspects of the Criminal Justice Act were discussed. The speaker commented on the disparities in the practice of the courts in dealing with persons by binding them over or placing them on probation. He instanced one large town where nine times as many adults were bound over as were placed on probation, and another, not far distant, where the figure was four times. The new Act, he said, would clearly distinguish between three kinds of treatment, the treatments corresponding with the degree of gravity of the offence. It would bring a wider recognition of the intention of Parliament that greater use should be made of probation. Their highest hopes were raised by the clause which made provision for treatment where the mental condition of the offender showed it to be necessary. He did not

expect a spate of psychiatric and psychological orders and he welcomed the new responsibilities to be placed on magistrates. Dr. PAUL CORNIL, Inspector-General of Prisons in Belgium, emphasised the necessity of knowing the personality of the delinquent in view of the fact that justice had not only to punish but also to apply measures adjusted to the needs of the criminal and protect society against further crime. Dr. W. H. DE B. HUBERT, Psychotherapist at Wormwood Scrubs Prison, thought that nothing could be done for the man who had been in and out of prison for twenty years. The people who could be helped formed only a small part of the prison occupants, probably 18 per cent., and in that 18 per cent. there were groups. If, he said, we had a special institution it must have as much freedom as possible, and they would want the right to make their cases interchangeable with cases in ordinary prisons. Unless they could do that, any special institution for psychological treatment would be unworkable. Commander F. P. FOSTER, Governor of Parkhurst Prison, suggested that each prisoner on his release should be given a fully stamped insurance card to enable him to get unemployment benefit. A man should not be made to live an abnormal life inside the prison walls. When first sent to penal servitude, men should go to a training prison, where they would be trained to work machines for the production of clothing and boots for the Government, and, if they went back for another sentence, they would then go to a factory prison and be paid at trade union rates on the condition that they became members of a trade union. Commander D. N. VENABLES, Governor of Oxford Prison, commented on the slender chance which boys sent to Borstal had of obtaining work in the trade for which they had been trained and emphasised that the touchstone of any activity must be: Will it help to do anything towards the reclamation of the boy?

Population Statistics.

BRIEF mention may be made of a prosecution, stated to be the first of its kind, which recently took place at Cardiff, for a refusal to give information under the Population (Statistics) Act, 1938. The accused gave the necessary registration particulars relative to the birth of his son. The registrar then read him the statutory notice calling for additional particulars under the new Act. These particulars, which are set out in the Schedule to the Act relate, it may be recalled, on registration of birth or still-birth, to (a) the age of the mother; (b) the date of the marriage; (c) the number of children of the mother by her present husband, and how many of them are living; and (d) the number of children of the mother by any former husband and how many of them are living. In answer to the registrar, the accused was stated to have said that he could not admit the right of the State to ask for confidential information about his private affairs, and on being asked by the stipendiary magistrate whether he would continue to defy the Act, he said that it was contrary to the rights of the citizens of this country. The maximum penalty, a fine of £10, was imposed.

Marrison v. Bell and Local Authority Employees.

READERS will remember that in *Marrison v. Bell* [1939] W.N. 101; 83 Sol. J. 176, the Court of Appeal held that in contracts of service there is no implied term suspending an employee's right at common law to wages during absence due to incapacity through illness (*Cuckson v. Stones*, 1 E. & E. 248). Accordingly, in the absence of some provision in the contract to the contrary, the right to wages continues until the contract is determined in accordance with its terms. The benefits conferred by the National Insurance Act, 1936, are intended to be in addition to wages, and the position is not, therefore, the same as that under the Workmen's Compensation Acts, where the receipt of compensation is to be treated as suspending the common law right. The National Joint Industrial

Council for Local Authorities Non-Trading Services (Manual Workers) which recently considered the problem of regularising, where found desirable, the payment of workmen's wages during sickness in consequence of this decision, unanimously passed a resolution expressing the opinion that it is unnecessary and inadvisable for any local authority to dismiss its workmen and re-engage them on the existing terms, and that legally it is sufficient to effect the regularisation by confirming the existing contracts of employment, care being taken that there is evidence in writing that the employees have had the existing terms of their engagement brought to their notice. The council recommended also that local authorities should, in determining the action to be taken, consult the employees' organisations with a view to securing their agreement. It is believed that the council's decision will affect the conditions of employment of 750,000 persons.

Town and Country Planning: Interim Development.

A CIRCULAR (No. 1834) which has recently been sent from the Ministry of Health to borough, urban district and rural district councils is concerned with the undesirable situation which may arise in an area where a planning scheme is being prepared by a joint committee or the county council if decisions as to interim development are issued by the interim development authority which conflict with the proposals of the planning authority. The provision in the Town and Country Planning Act, 1933, under which the interim development authority is ordinarily the council of the district in which the land is situate, was devised (the circular states) primarily for the sake of expedition and administrative simplicity and for the convenience of persons desirous of undertaking development. Proposals for development must necessarily be referred to the local authority of the district in compliance with the local byelaws as to new streets and buildings, and it is of manifest advantage that the authorities to which a developer must apply for consents to proceed should be as few as possible. But, the circular urges, it is contemplated that interim development authorities will at all times work in close liaison with the planning authority, and it is of the utmost importance that in dealing with proposals for interim development the interim development authorities should be aware of, and pay due regard to, the intentions of the planning authority with respect to the planning of the area as a whole. The position of the councils to which the circular is addressed is not merely that of agent for conveying the decisions of the planning authority, but a serious conflict of views between the two bodies must necessarily create difficulties for the latter. It is obvious, the circular states, that the work of the planning authority would be largely wasted if interim decisions out of harmony with the intentions of a proposed scheme were given with any frequency, and in the event of a situation of the kind in question developing the Minister might well have to consider the question of transferring the control of interim development to the county council or some other appropriate authority.

The Patents and Designs (Limits of Time) Act, 1939.

THE attention of readers should be drawn to the coming into force of the Patents and Designs (Limits of Time) Act, 1939. The Act received the Royal Assent on 13th July, and by s. 5 (3) comes into operation at the expiration of one month from the date on which it was passed. The purpose of the new Act is to amend certain provisions of the Patents and Designs Acts, 1907 to 1938, relating to time limits. It is not possible within the space available to deal with these amendments in detail, but it may be shortly noticed that a new section is substituted for s. 5 of the Act of 1907 ("the principal Act"), as amended by subsequent Acts, relating to time for leaving complete specifications; that a new section 8A replaces s. 8A of the same Act, that various consequential amendments are introduced in ss. 3 and 97, and that further amendments are effected in ss. 11A, 12, 17, 27 and 53.

Criminal Law and Practice.

DEFAULT IN PRODUCTION OF A DRIVING LICENCE.

AN interesting point was recently taken by the prosecution in *R. v. Follett*, at the Bow Street police court (22nd March) in a charge under s. 33 (4) of the Road Traffic Act, 1934. That section provides that if default is made in the production of a licence pursuant to a requirement under s. 33 (3) of the Act, the holder shall be guilty of an offence and the licence shall be suspended from the time of the requirement until it is produced to the court.

Under s. 33 (3) it is provided that where a person is prosecuted for driving a motor vehicle on a road at a speed exceeding a speed limit imposed by or under any enactment, or for an offence under s. 11 of the principal Act (which relates to reckless or dangerous driving) or s. 12 of the principal Act (which relates to careless driving) or s. 15 of the principal Act (which relates to driving when under the influence of drink or drugs), then, if at the time of the alleged offence he is the holder of a licence to drive a motor vehicle granted under Pt. I of the principal Act, he shall either cause it to be delivered to the clerk of the court not later than the day before the date appointed for the hearing, or send it by registered letter duly addressed to the clerk and posted at such a time that in the ordinary course of post it would be delivered not later than that day, or have it with him at the hearing, and, if he is convicted of the offence, the court may require the licence to be produced to it.

The defendant in the case at Bow Street police court had been convicted of exceeding the speed limit and an order was made for the endorsement of her licence. She failed to produce her licence, but a summons for an offence under s. 33 (4) was not issued until more than six months later. This was, of course, after the period of limitation had expired for laying an information, as limited by s. 11 of the Summary Jurisdiction Act, 1848, which provides that in all cases where no time is already or shall hereafter be specially limited . . . such complaint shall be made and such information shall be laid within six calendar months from the time when the matter of such complaint or information respectively arose.

It was urged for the prosecution that the offence was a continuing one, and that, therefore, the statutory period of limitation had not expired. The learned magistrate, however, held that he was bound by the decision in *Solicitor to the Board of Trade v. Ernest* [1920] 1 K.B. 817, to hold that the offence was not continuing and dismissed the summons.

The case on which the learned magistrate relied was an information under ss. 3 and 9 of the Registration of Business Names Act, 1916, for furnishing a statement under that Act which contained matter which was false to the knowledge of the person signing it. The magistrate held that the offence was not a continuing offence and the prosecution was therefore out of time.

On appeal, the Board of Trade had the advantage of being represented by the then Attorney-General, Sir Gordon Hewart, as well as the present Mr. Justice Branson. The Earl of Reading, C.J., pointed out that there was a section in the statute which made the offence of failing to furnish a statement a continuing offence and imposed a fine for every day during the continuance of the default. "When one sees how the conviction would be recorded," said the learned judge, "one arrives, in my judgment, at the right conclusion in this case . . . if there had been a conviction it would have been for furnishing a statement containing false particulars." Avory, J., pointed out that the ordinary way to treat an offence as a continuing offence, namely, to provide a penalty for each day during which the offence continued, was lacking.

That it is not necessarily the only way of creating a continuing offence is clear from *Ex parte Burnby* [1901] 2 K.B.

458, where it was held that it was a continuing offence for a person licensed to sell by retail intoxicating liquors at certain premises to permit those premises to be used as a brothel, contrary to s. 15 of the Licensing Act, 1872, even where the offences were not alleged to have taken place on consecutive days. The statute in question must be considered in relation to the language it uses, and it is clear that there is not necessarily only one form of words which can render an offence "continuing." In *Meyer v. Harding*, 17 L.T. 140 and *Best v. Butler and Fitzgibbon* [1932] 2 K.B. 108, it was held that the offence of "wilfully withholding moneys" contrary to s. 12 of the Trade Union Act, 1871, was a continuing offence, and that it was unnecessary to show that the defendant still had the money in his possession at the date of the information. In *Pullen v. Carlton* [1918] 2 K.B. 207, it was held that the word "detains" in a penal section of the Army Act, 1881, did not bear the technical meaning applied to it in an action of detinue, that it was therefore unnecessary to show demand and refusal in order to prove the offence charged, and that the use of the word showed that it was a continuing offence.

From these authorities it would appear at least arguable that default in the production of a licence pursuant to a statutory requirement is analogous to "withholding" or "detaining" and that therefore the offence, in spite of the finding of the learned magistrate at Bow Street, is a continuing one. One of the penalties for the offence is the suspension of the licence from the time of the requirement under s. 33 (3) until its production to the court, and that is certainly a continuing penalty. It is hard to discover any distinction between "default in producing" and "withholding" or "detaining" which can be expressed in language.

It should, moreover, be added that courts which exercise a certain amount of leniency with regard to the time within which they require the licence to be produced, may thereby be putting stumbling blocks in the way of a subsequent successful prosecution for the offence of default in production of a licence.

On the other hand, it might well be contended that s. 33 (3) fixes a definite time by which the licence must be delivered or posted to the clerk of the court if the defendant does not intend to produce it at the actual hearing, and that the real offence consists in not being prepared to produce it on the day of the hearing. However this may be, the question is eminently one for the decision of an authoritative tribunal, more particularly as it is one of extreme practical importance.

Voluntary and Compulsory Registration and the new Fee Order.

By SIR JOHN STEWART-WALLACE, C.B.

THE experience of the Land Registry over many years has shown beyond question that registration in the non-compulsory areas is much more difficult to administer and consequently much more costly than in the compulsory areas.

Though year after year the reports of the Chief Land Registrar to the Lord Chancellor have emphasised this point, the conditions which produce this result are not commonly appreciated. As the new Land Registration Fee Order, 1939, imposes higher fees in the non-compulsory areas than in the compulsory, it is desirable that these reasons should be understood.

Why, therefore, are non-compulsory cases much more difficult, and costly to handle in the Registry than compulsory?

The first fundamental fact contributing to this result is the scheme of the Land Registration Act itself. A scheme, the very essence of which is its insurance fund, its indemnities, its compulsion on sale only, and a Land Registry required to maintain itself out of its own fees. Such a scheme is not based

on the idea of isolated laymen one day in Cornwall and the next in Newcastle applying for registration in a more or less haphazard way on such evidence of title as they happen to have in their possession. It is based on the conception of a compact area of sufficient size to produce a steady stream of work; an area where registration is compulsory after a sale in which the purchasers' solicitors have thoroughly sifted the title before advising their clients to hand over the purchase money; and where all the simple and good titles must come to the Registry as well as the weak and the complex.

Under such a scheme the Registry can be made to pay at low *ad valorem* fees for it can act on the insurance principle. It can take risks in individual cases on the ascertained fact (pointed out by the Royal Commission on the Land Transfer Acts) that it is the "rarest exception" for the actual holding of land in England to be disturbed. The Registry authorities, knowing that in a compulsory area all titles must come to the Registry, are free to exercise their judgment not in the light of the risk in one case but on the almost negligible risk when spread over the whole area. They can be reasonably lenient in the examination of title, and being reasonably lenient means a great reduction in cost to the Registry. Administrative arrangements can be made to handle a volume of work of which an estimate at least approximately accurate can be formed. The office can be staffed and financial provision made accordingly. Mass-production methods can be applied.

It is not too much to say that all the favourable circumstances present in a compulsory area are absent in the non-compulsory areas.

For reasons readily understood, the titles presented for registration from non-compulsory areas tend to be those so long, complex and disputable that, apart from registration with an absolute title, grave difficulties on sale are to be expected. At the same time the great mass of simple titles in such areas are withheld from registration. There is selection against the Registry and it is a commonplace that no insurance system can apply where "bad lives" predominate. Hence, the Registry has to submit such titles to a rigorous examination in the light of the risk in each case. The process of registration is inevitably delayed and every source of delay is not only a source of added cost to the Registry but of irritation to the public.

Again, in non-compulsory areas, the application for registration is not commonly based on a sale. The title is consequently not in the order it must be to satisfy a purchaser's solicitor. There are not, for instance, the usual requisitions and replies to assist the Registry. Indeed, many titles are submitted for registration in what may fairly be called a haphazard way. No proper abstract of title accompanies the application. A bundle of deeds is submitted as sufficient without evidence of relevant deaths and so forth. The added trouble, correspondence and cost to the Registry in such cases can readily be understood. The point does not require driving home that if such cases predominate, as they do in voluntary areas, the Registry cannot conduct them on a paying basis for the same fees as those in a compulsory area.

A further difficulty in the non-compulsory areas is caused by the high proportion of registrations of land of negligible value. In parts of Essex plots of land are sold for sums between £10 and £50. As might be expected, not only are defective paper titles more frequently met with in cheap than high value land, but a much larger proportion of cases occur where plans are prepared and boundaries are set out on the ground without skilled assistance. In the result substantial discrepancies between indifferent deed plans and actual occupation constantly present themselves. Careful investigation and possibly special enquiries on the ground are necessary, followed by troublesome correspondence or interviews and possibly notices to adjoining landowners with their resultant correspondence. All this is a fruitful source of cost to the Registry for which under the 1930 Fee Order the *ad valorem*

fee in the lowest values was 10s. on a first registration and 1s. on a dealing—a fee palpably inadequate.

It may be urged in reply that the essence of *ad valorem* fees is that, what is lost in the low values is recovered on the high. Such a reply, however valid in a compulsory area, is not cogent in a non-compulsory area. For in such areas the low value cases are not compensated for by the high value, nor the complex by the simple titles. There is selection against the office.

In non-compulsory areas, moreover, there is a growing tendency to register all large estates about to be developed for building. In such cases the trouble is not so much on first registration as on the subsequent sales of plots. Almost every sale on such estates requires a survey because of the erection of new fences; and surveys are for the Registry a really serious obstacle. On the average they cause a delay of six days. And this not because of the hour or two the average survey takes on the ground, but because of the need of ascertaining that a survey is wanted; the need of preparing special plans and instructions as to the survey required; the need of communicating these instructions to the Ordnance Survey; the need of getting the Ordnance surveyor to and from the ground; the need for him to prepare special reports of what he finds; the need of getting this information back to the Registry; and on a large estate a week or more may easily be taken on the ground, or rain, fog, snow or wind may delay it indefinitely.

Quite apart from the difficulty, moreover, springing from the need for a survey, every sale on a building estate involves the revision and often the enlargement in the Registry of the vendor's registered plan as well as the preparation of an entirely new registered plan for the purchaser. True, development of building estates occurs in compulsory areas and loss is incurred on them, but in compulsory areas the amount of undeveloped land is small in relation to the proportion of developed property. In non-compulsory areas there is no such limitation. The Registry tends to get the undeveloped land on which loss is incurred, without getting the developed property of high value to compensate for the loss.

The combined effects of all these causes would be sufficient in themselves to explain why registration of title in non-compulsory areas is, and must be, slower, more difficult and more costly than in compulsory, but what is a most potent cause still remains, namely, that in non-compulsory areas the Ordnance map is so frequently many years out of date. Hence, in a much higher proportion of cases not only has a special survey to be made, but this special survey is much more expensive. And this in the nature of things. For in the compulsory areas the maps are not only brought up to date before compulsory registration is introduced, but, what is even more important, the Registry makes arrangements with the Ordnance Survey to keep a special staff of survey officers in each compulsory area, so that in anticipation of the registrations which must come in, the Ordnance maps for such areas may be continually kept up to date. If, in spite of this, a special survey is required, these officers are on the spot to make it. In the non-compulsory areas the maps cannot be brought up to date, much less kept up to date, in anticipation of registrations which the Registry has no means of foreseeing and which may not materialise at all. Scattered first registrations, one day in Cornwall, another in Newcastle, clearly do not permit survey officers to be maintained in such areas for land registry purposes. Heavy travelling expenses may consequently be involved before the survey can even be commenced.

Facts such as these supply the answer to the question why registration is so much more difficult and costly to administer in non-compulsory areas than in compulsory. Experience through many years has demonstrated that the Land Registry can no more administer registration of title in non-compulsory areas at the same cost and with the same speed, smoothness

and satisfaction to those using the registry as in compulsory areas than a bus company could run a paying service of buses to pick up odd passengers in London and carry them to any town in England and Wales to which at any time of the day they might desire to go.

Registrations from non-compulsory areas have always presented special difficulties and delays, but, so long as their number was materially lower than those in the compulsory areas, the loss incurred on them did not endanger the financial stability of the registry as a whole. Once, however, they began to exceed those from the compulsory areas, as they began to do from about the year 1933, it was apparent that the Registry was on a slippery slope from which sooner or later it would have to be rescued. The heavy deficit in the non-compulsory areas incurred in 1938/39 no longer, owing to the international crises, balanced by a surplus from the compulsory areas, brought matters to a head. The new 1939 Fee Order became imperative.

That Fee Order distinguishes between compulsory and non-compulsory areas, making the fees materially higher, especially on first registration, in the non-compulsory areas. In so doing, the Order complies with the spirit of s. 134 of the Land Registration Act. That section contemplates that the fees in one area may differ from the fees in another, and so enables the intention of the Act that the Registry should be self-supporting to be carried out the more equitably and conveniently.

Incidentally, the fact that voluntary registration is so costly supplies the answer to those opponents of registration who, willing to concede that registration is the only practicable remedy in certain classes of titles, claim that compulsion should not be applied. Registration of title, they say, should be available, but should be left to individual and voluntary initiative.

Such persons truly wish to have their cake and eat it. What they really desire is that registration of title should be confined to cases which cannot be handled satisfactorily under private conveyancing at all, and that such cases should be registered at fees which presuppose a compulsory area to enable the Registry to be maintained. If they mean anything else, then the answer to them is that the cost of a purely voluntary registry would be prohibitive. Prohibitive in the sense that the fees which would have to be charged to make such a registry self-supporting would be such as to cut off the source of revenue altogether. The public, as the experience of 1862 to 1900 shows, would not pay the price. The game would not be worth the candle.

It is idle to suggest a registry which would not only have all the bad lives, but from which all the good would be excluded and to expect such a registry to work with the same ease, smoothness, celerity and cheapness as in a compulsory area where the good predominate.

Company Law and Practice.

No doubt all my readers are familiar with the lien a solicitor obtains on the documents of his client, and I propose this week to notice some of the cases where this lien has been established or sought to be established against a company incorporated under the Companies Acts.

The lien is given by the general law, and it is difficult to state the nature of the right in accurate language. It has been said that it is the right of a solicitor to sit upon the client's deeds in his possession; he can lock them up and say to his client: "You shall not have them until you have paid my costs," and this definition is sufficient for my present purpose.

Having regard to the fact that the solicitor's lien was a right of this nature, Kekewich, J., decided in *Brunton v. Electrical Engineering Corporation* [1892] 1 Ch. 434, that where

a company had issued debentures, as long as those debentures continued to be a floating security, i.e., until the appointment of a receiver, even if they provided that the company was not to be at liberty to create any mortgage or charge in priority to the debentures, a solicitor who was employed in the ordinary course of the company's business could not be prevented from acquiring the ordinary solicitor's lien.

In his judgment Kekewich, J., says: "The debenture-holders have no right to interfere with the position of the company; they have no right to interfere with the use by the company of their property in the ordinary course of business; they can do nothing really which will prevent the company from making away with the whole of their property and leaving nothing for them, the debenture-holders. The company are masters of the position, and the debenture-holders cannot themselves do anything to prevent the solicitor from acquiring the right which the general law gives him."

He then goes on to consider the provision that the company is not to create any mortgage or charge in priority to the debentures, and he holds that inasmuch as the right is given by the general law, it cannot properly be called a mortgage or charge, but that even if it was a mortgage or charge, that it was not one created by the company.

As a result of this, therefore, the position is that when a solicitor can claim a lien on documents in respect of costs incurred by a company prior to the appointment of a receiver by debenture-holders even if the debentures expressly prohibit the creation by the company of charges having priority to the debentures that lien will have priority over the debentures.

It is clear that in the passage from the judgment of Kekewich, J., quoted above, where he says, "they," i.e., the debenture-holders, "have no right to interfere with the use by the company of their property," "their" means the company's, for he refers to it in the plural all through the judgment.

Anyone, therefore, who has a difficulty in making up his mind whether to refer to a company as "it" or "them" in documents such as pleadings and agreements may, if he is content to follow the example of Kekewich, J., refer to it in the plural, and call it "them."

Some documents however of a company are immune from this lien, e.g., the share register and minute book, and the reason for this is to be found in the judgment of Cotton, L.J., in *Re Capital Fire Insurance Association*, 24 Ch. D. 408, where he says: "Two of these documents, viz., the register of shareholders and the minute book, stand in a peculiar position. Could appellant (the solicitor) establish any lien upon them so as to prevent the official liquidator from having them in his possession for the purposes of the winding up? In my opinion he cannot. No doubt a solicitor gets his lien without any special contract, but still his lien arises from contract, and he can claim no greater lien than the person who puts the documents into his hands is capable of creating. It is true that directors of a company have a general power of dealing with the property of the company, but so far as no express power is given to them, they have only such powers of mortgage and sale as are reasonably incident to the business they carry on; they must not deal with any property of the company in a way inconsistent with the objects and constitution of the company, and this decides the case as to these two books."

He goes on to point out that the register of shareholders is a book which, under the Companies Act, 1862, is to be kept at the office of the company for the purposes mentioned in the Act, e.g., for the purpose of being open to inspection by any member, and, consequently, the directors had no power to deal with it in such a way as to interfere with these purposes.

In other words, it would be *ultra vires* the directors, and probably also *ultra vires* the company, expressly to create a charge on the share register, and, consequently, a solicitor could not acquire a lien on it by the operation of law.

Dealing with the minute book, Cotton, L.J., said that the case was not so clear, but that, having regard to the articles and constitution of the company, he was of opinion that the directors had no authority to deal with that book so as to deprive themselves of the full power of using it for the purposes of the company.

Nowadays, the minute book would be in precisely the same position as the register of members for, by s. 121 of the Companies Act, 1929, it must be kept at the registered office of the company and be open to inspection by the members. His remarks in this connection are, however, of interest, for they remind one that even in the case of books which the Acts do not require to be kept in particular places for particular objects, nevertheless the constitution of the company may show that the directors had no power to dispose of them, and consequently, they could not become subject to a solicitor's lien.

It was, however, held in that case that a winding-up order could not defeat a valid lien which existed at the time the winding-up petition was presented, and the answer for the argument that such a lien might put the liquidator and the company in a position of great difficulty, was said by Cotton, L.J., to be that if persons do not pay their solicitors they may get into difficulty. He also pointed out, as is still the case, that the liquidator would be able to get such production of documents over which a lien was established as was necessary for the purposes of the liquidation, and this power, except in cases of documents of title, may probably make a solicitor's lien in such a case of less value than it would ordinarily be.

Another aspect of a solicitor's lien is where a solicitor has a lien for the costs on a fund recovered for his client by his activities. In such a case the solicitor is entitled to claim a lien for his costs on the property or money recovered against everyone, even the liquidator, assuming that he has not been told to cease acting by the liquidator or that he had fully recovered the property or money before the commencement of the winding up.

For example, in *Re Born* [1900] 2 Ch. 433, solicitors employed by a limited company recovered a claim against an estate in the course of administration, and the fund, a share of which the company had as a result of its solicitors' efforts become entitled to, was in court. Subsequently, the company was wound up by the court and shortly thereafter the solicitors applied for an order charging their costs on the company's share of the fund in court under s. 28 of the Solicitors Act, 1860.

Such an order would give the solicitors priority to the other auditors of the company and also for the costs and expenses of the petitioning creditor and the official receiver. The application was made over three years after the claim had been recovered and it was argued that the order, to which there was no absolute right, ought not to be made, having regard to the delay, and having regard to the fact that the winding up of the company had supervened.

Farwell, J., made the order, and held that mere delay had nothing to do with the matter unless other rights intervened. He also held that the order did not give the solicitors any new right which they did not have before, but merely enabled them more cheaply and speedily to enforce that common law lien, which lien had not in any way been affected by the winding up.

This kind of lien is of a simpler nature than that over books of a company and the nice points which arise in the course of winding up with regard to a solicitor's lien over books do not so frequently arise in this latter case.

The annual return showing the rates in the pound and the rateable value of every borough, urban and rural district in England and Wales for 1938-39 (including particulars for 1937-38 for purposes of comparison) has now been issued by the Ministry of Health. It is entitled "Rates and Rateable Values in England and Wales" and can be obtained, price 1s., direct from H.M. Stationery Office or through any bookseller.

A Conveyancer's Diary.

LIKE schools, which were discussed in this place a week ago, premises used otherwise than for the residence of a single family present difficult questions upon the construction of covenant.

Lodgers, Flats and Restrictive Covenants.

Suppose that A has a large house, and is contemplating its more profitable utilisation, how may he be affected by any covenants regarding it? If there are covenants, one of them may be against user for business. As we saw in the former article "business" is a wide and flexible term. If A makes a habit of taking in paying guests he certainly infringes a covenant against user for business: *Thorn v. Madden* [1925] Ch. 847. He need not advertise to infringe the covenant, nor need he take in all and sundry as if he was an hotel-keeper. The covenant is infringed if he systematically takes in paying guests.

But there is no infringement in a trivial case; it is not a business to take in a friend who contributes to the household expenses: *Thorn v. Madden, supra*; *Porter v. Gibbons*, 48 Sol. J. 559.

But A's infringement is because he is carrying on an activity; he "does for" the paying guests. If there is no activity, there can be no business. It is clear that there would be no infringement by a mere sub-letting of the entire premises as a unit; similarly, it seems that there would be no "business" if the entire house was turned into self-contained flats which were simply let to various people without the provision by A of any services common to all the flats. On the other hand, anything short of such complete sub-letting is a "business." Thus, in *Barton v. Reed* [1932] 1 Ch. 362, the underlessee of a house divided the whole place into three flats and sub-let them; but she retained control of the stairs, etc., and provided hot water for all the flats. Though she did not herself reside there, she was held to be using the premises for "business."

Taking in lodgers or letting flats is, however, not a "trade," as there is no buying and selling. Conceivably, the provision of food to a lodger could be so described, but it is not the operation primarily conducted by a lodging-house keeper.

Though taking in lodgers or letting flats is generally a "business," it is not an "offensive business" if conducted with normal propriety: *Vernon v. Small* (1936) I.R. 677. But a private lunatic asylum, which is, after all, only a specialised sort of lodging-house, has been held to be an offensive business: *Doe d., Wetherell v. Bird*, 2 A. & E. 161. Accordingly, care must be taken to see that a case falls on the right side of the dividing line.

Conversion of a single dwelling-house into flats will almost necessarily infringe a covenant prohibiting "alterations" to the premises without the licence of the covenantee, as it is almost certain to involve the construction of new partition walls and doorways: *Day v. Waldron*, 88 L.J.K.B. 937.

Further difficulties arise for the flat owner if there are covenants against user save for private residence. Such covenants take two forms: they may either (1) prohibit user "save for private residence," or (2) they may prohibit it save for "a private residence," or "a single private residence." The first of these covenants would only be broken if what is done amounts to user for business; all the flat-dwellers are using their respective flats for "private residence" in the abstract, and the covenant is only broken if someone does something on the premises which is not user for "private residence." Thus, in *Barton v. Reed, supra*, the defendant was carrying on a business and so was using the premises otherwise than for private residence, though the occupants of the flats were not. If the building were let in self-contained flats with no common services the covenant could hardly be broken.

But where the covenant is against user save for "a private residence," user for a block of flats is necessarily an infringement, since each flat is a distinct private residence: see

Rogers v. Hosegood [1900] 2 Ch. 388 (where the covenant was that only one dwelling-house should be erected on the site and that it should only be used for private residence) and *Berton v. Alliance Economic Investment Co.* [1922] 1 K.B. 742. In *Barton v. Keeble* [1928] Ch. 517, the covenant was for user as a private dwelling-house only, and the infringement was by the occupier letting the upper floor as a flat, while continuing to live downstairs.

As appears from what has been said, the advisers of a person who is contemplating the erection of a block of flats, or is thinking of converting his house into flats, or even who has in mind to make a little money by taking in lodgers or paying guests must consider very carefully whether there are any covenants which would prevent him from doing so. Any such activity almost certainly does infringe a covenant against user save for private residence or against user for business; it certainly infringes user save for a private residence; conversion into flats probably infringes a covenant against making alterations. But it probably does not infringe one against offensive businesses, and, similarly, it probably does not infringe one against causing a nuisance or annoyance. And it certainly does not infringe one against user for trade.

If there turn out to be covenants preventing the plan contemplated, it may well be worth considering whether an application is desirable under L.P.A., s. 84 (1), for the modification of the covenants so as to permit what is desired. Many covenants still existing were taken in days when the modern habit of living in flats was unknown, and if the neighbourhood is one where there are by now already a good many flats, the application has a good chance of success. Such an application may be made in respect of covenants affecting freehold land, or those affecting leaseholds for a term originally exceeding seventy years of which fifty at least have expired. There is also power for the county court to vary covenants so as to enable houses to be converted into flats where the neighbourhood has changed: Housing Act, 1936, s. 163. This power may sometimes be more convenient to employ than that to apply to the arbitrator under the L.P.A., s. 84 (1).

Landlord and Tenant Notebook.

No decision has as yet interpreted that part of s. 18 (1) of L.T.A., 1927, which in terms relieves covenantors from liability for dilapidations when the premises are to be pulled down.

It seems to me that even if recourse be had to examining the object of the provision in the light of history, the phraseology is such as may make application difficult.

The subsection first enacts: "Damages for a breach of a covenant . . . to leave or put premises in repair at the termination of a lease . . . shall in no case exceed the amount (if any) by which the value of the reversion (whether immediate or not) in the premises is diminished owing to the breach of such covenant . . ." We have had one authority on this: *Hanson v. Newman* [1934] Ch. 298, C.A., which interpreted the word "reversion" as "the land which has reverted," so that a tenant who had sought no relief against forfeiture for disrepair was held not to be entitled to set off the value of the gain represented by the acceleration of the reversion. The subsection proceeds: "and in particular no damage shall be recovered for a breach of any such covenant or agreement to leave or put premises in repair at the termination of a lease, if it is shown that the premises, in whatever state of repair they might be, would at or shortly after the termination of the tenancy have been or be pulled down, or such structural alterations made therein as would render valueless the repairs covered by the covenant or agreement."

Credit is due to the draftsman's imagination for using the passive voice. In one paraphrase of this enactment I have

seen the position expressed by saying that in particular no damage is recoverable if it is shown that it was the landlord's intention to pull down the premises at the termination of the tenancy. This is correct as far as it goes, but, if that were all, the more crafty landlords would benefit if the demolition were effected by third parties, possibly limited companies formed for the purpose, and this has been anticipated.

But the sequence of tenses as emphasised by the italics I have used seems to me to be likely to cause difficulty, and I will illustrate my point by an imaginary set of facts, as follows.

In January, 19—, at a board meeting of the X Property Company, Limited, their managing director is authorised to negotiate for the purchase of a row of houses contiguous to a block of flats belonging to them. Negotiations commence.

In February, A, reversioner of one of the houses, while in negotiation with Messrs. X, instructs his surveyor to prepare a schedule of dilapidations, as the term is about to end.

In March the schedule is served on the tenant B, and the term ends.

In April, A issues a writ against B for damages for breach of covenant to deliver up the house in accordance with the repairing covenants.

In May the negotiations between A and Messrs. X result in a sale, and Messrs. X proceed to demolish the house.

In June, while Messrs. X are erecting part of an extension to their block of flats on the site, A v. B comes on for hearing.

It will be seen that the question whether L.T.A., 1927, s. 18 (1), avails B depends on the answers to certain other questions.

First, there is the question what is meant by "It is shown that." These words normally refer to the state of affairs at the date of trial.

Secondly, what must B show? That the premises either "would at or shortly after the termination of the tenancy have been pulled down," or else that they "would at or shortly after the termination of the tenancy be pulled down." Now it is obviously impossible for B to show in June that premises demolished in May "would have been pulled down" or "would be pulled down" unless these words express an intention formed at an earlier date. The court is, I submit, to be asked to find that at a certain stage one could have said "these premises are to be pulled down," and the stage in question, not specified in the latter part of the subsection, must be the "at the termination of the lease" mentioned in the first part. If when the action is tried the premises have in fact been pulled down, the defendant shows that they indeed *would be* pulled down; but if they have not in fact been pulled down, he may still be able to show that they *would have been* pulled down. On this construction the words "in whatever state they *might be*" would likewise mean "at the termination of the tenancy."

If this construction does violence to grammar, it is supported by examining the known mischief which the enactment was intended to remedy. The leading cases are *Rawlings v. Morgan* (1865), 34 L.J.C.P. 185, and *Inderwick v. Leech* (1885), 1 T.L.R. 95, 484. In the former the sequence of events was as follows: June, 1863, the defendant, then tenant to the plaintiff and others, makes an offer for the renewal of his tenancy, which is due to expire at Christmas. The offer is rejected. In December the lessors negotiate an agreement, to commence at Christmas, with a firm, who agree to pull down the existing building, erect another, and pay an increased rent. On 26th December the firm take possession. In January, 1864, they commence demolition. In March the agreement between them and the lessors is reduced to writing. In June they complete the demolition. These facts were held to afford no defence to the claim for dilapidations.

In *Inderwick v. Leech* the lease to the defendant expired in March, 1884, and in his defence to a claim for £200 dilapidations he pleaded: "after the said premises were yielded up, the plaintiff at once shut up the same and has

pulled down or will pull down and reconstruct the same, and if the said premises were in any way out of repair the plaintiff's reversion thereon has not been in any way injured." At the hearing on 27th November, 1884, the learned judge declined to leave the question to the jury, and referred the assessment of damages to a surveyor; on 13th March, 1885, a motion for a new trial was refused.

I think these two decisions illustrate the mischief sought to be remedied by s. 18 (1) of L.T.A., 1927, and particularised in the second part of that subsection: *Rawlings v. Morgan* being a case in which premises were to be pulled down at, and *Inderwick v. Leech* a case in which they were to be pulled down shortly after, the termination of the tenancy.

In both cases, as in the hypothetical example I have given, demolition was complete or well under way before the hearing of the action, and this supports the construction of the badly worded subsection contended for above.

Even so, difficulties are likely to arise not only as to the period covered by "shortly after," but as to the degree of probability which will satisfy the requirement if an action be launched a little before the lease expires and heard before any demolition or alteration is put in hand. In *Inderwick v. Leech* counsel for the plaintiff stated in court that his client had not made up his mind to demolish the property when the tenancy terminated, but came to that decision soon after. So questions may arise, when is a building "to be" pulled down? When the landlord is negotiating with purchasers who have that intention, or is inviting estimates from demolition contractors, or when negotiations are proved to be complete or estimates accepted? Equally difficult to prove might be a plea that the premises "would have been pulled down," when in fact they have not. It will be remembered that the villain of one of Mr. Walt Disney's dramas, who intended to pull or blow down three sets of premises, succeeded in the case of two only; but as the failure in the last case was due to the excellent condition of the structure the example does not help us much, apart from the circumstance that it is a fictitious one.

Our County Court Letter.

AGISTMENT OF CATTLE BY BANKRUPT.

In a recent case at Ipswich County Court (*In re Capon*) an application was made by the trustee in bankruptcy for (1) a declaration that 679 pigs, seized by the respondents (two firms of auctioneers), were the property of the bankrupt and divisible among his creditors; (2) an order for payment of £4,408 2s. 3d., with interest, being the proceeds of sale of the pigs. The evidence was that on the 22nd February, 1938, there were on the bankrupt's farm a number of pigs which had been knocked down to him at the respondents' auction sales. The bankrupt was informed, on that day, by members of the respondent firms, that the pigs would be removed, and such removal took place the next day, after the locks and gates had been broken open. The same morning, i.e., on the 23rd February, a deed of assignment was executed at 9.30 a.m., but a receiving order was made on the 14th March and the adjudication in bankruptcy occurred on the 18th March. Transactions between the bankrupt and the respondents had taken place since December, 1934, or January, 1935, and the course of business had been for pigs to be knocked down to the bankrupt, who received a bought note. He would then sign an agistment note as follows: "Received of Messrs. — 36 feeding pigs, cost £134 4s., which I agree to feed and see after for the said —. I acknowledge that these pigs are their property, and may be removed and sold by them at any time." One of these notes was dated the 19th August, 1937, and, after the pigs had been fattened, the usual practice was to return them to the respondents, who sold them by auction and issued a sold note

for the amount realised, less their commission. A cheque for the net amount was sent to the bankrupt, and he sent the respondents a cheque for the amount at which the pigs had been originally knocked down to him. The applicant's case was that the effect of the transaction was to pass the property to the bankrupt at the time when his bid was accepted and he obtained possession. Delivery was taken on the terms that payment should be deferred until the pigs had been fattened and an increased price realised on sale. It then only remained for the bankrupt to pay the original price at which the pigs were knocked down to him. The case for the respondents was that the effect of the arrangement, especially the agistment notes, was that the bankrupt bought on their behalf as their agent; that the property was intended to remain, and did remain, in the respondents until re-sale; that the pigs were held on agistment, for which the bankrupt's remuneration, as agister, was the difference between the price at which they were originally knocked down to him and the price at which they were ultimately sold. This was agistment on the increased value system, under which farmers bought and sold stock as agents for the owners.

His Honour Judge Hildesley, K.C., observed that the above arrangement was not agistment in the ordinary sense. Nevertheless, the essence of a contract of agistment, without a contract of bailment, was that the owner of stock entrusted it to the agister for reward. If the respondents were the owners, the profit which the agister expected to make, although in an unusual form, was still a profit. The course of dealing between the parties could not be separated into two or more independent transactions. The contractual relationship did not depend upon any documents or series of documents, but upon the inferences to be drawn from the facts as a whole. The common intention of the parties appeared to be that the pigs should remain the respondents' property. Under the Sale of Goods Act, 1893, s. 17 (1), the property in goods was transferred to the buyer at such time as the parties intended it to pass, and the evidence negatived any intention to pass this property to the bankrupt. The agistment notes could not be rejected on the ground that they were inconsistent with the true nature of the bargain between the parties. The motions were therefore dismissed with costs out of the estate.

RECENT DECISIONS UNDER THE WORKMEN'S COMPENSATION ACTS.

SUFFICIENCY OF OFFER OF WORK.

In *Marston v. Exhall Colliery and Brickworks, Ltd.*, at Nuneaton County Court, an award was claimed on the basis of total incapacity. The applicant had suffered the loss of the third and fourth fingers, and the first two joints of the first finger of the right hand, in June, 1917. Compensation was paid for twenty-three weeks, and in November, 1917, the applicant resumed work on a light job. In 1938 the respondents employed the applicant as an electrician, but the pit closed in April, and he was thereafter paid 15s. a week on the basis of partial incapacity. An offer was then made of work which involved shovelling, which the applicant contended he could not do. The respondents denied that the applicant was totally incapacitated, as this work offered was suitable. After a demonstration with shovels in court, His Honour Judge Hurst held that the applicant was not totally incapacitated, as his own doctor considered the jobs were suitable. The application was therefore dismissed, with costs to the respondents.

OMNIBUS DRIVER'S DERMATITIS.

In *Ashfield v. Oxford Motor Services, Ltd.*, at Oxford County Court, the applicant's case was that he had contracted dermatitis through catching his hand against a metal box, which was fitted too close to the gear box of an omnibus. While driving, the applicant had twice knocked the skin off,

with the result that petrol and oil had penetrated the cut, thereby causing total incapacity from October, 1937, until March, 1938. Corroborative evidence was given by the applicant's panel doctor, but the respondents denied that the dermatitis was caused by driving an omnibus. Drivers were supplied with forms in which to enter any complaints about their vehicles. No such entry was made by the applicant in June or July, 1937, which was the date of the alleged injuries. The insurance card holders had admittedly been moved on the applicant's bus, but not with the authority of any official of the respondents. At an interview, prior to the proceedings, the applicant did not suggest that the disease was caused by a scratch while at work. His Honour Judge Cotes-Predy, K.C., dismissed the application, with costs.

DECLARATION OF LIABILITY.

In *Tucker v. Norman & Pring, Ltd.*, at Exeter County Court, the applicant was aged twenty years, and in 1935 had been sweeping up the floor of the washhouse at the respondents' brewery. Having slipped upon some glass, the applicant sustained a cut wrist, whereby he was totally incapacitated for four weeks. The pre-accident wages were 14s. a week and compensation was duly paid. The applicant returned to work, but his wrist became worse. At Easter, 1938, he saw his doctor and returned to work until July, when he again had to attend hospital. The medical evidence was that the applicant's sensation to pin-pricks was diminished in the thumb, first and second fingers and part of the third. In the middle finger there was complete loss of sensation, which could not be faked. The respondents' medical evidence was that the applicant had originally shown such cunning as to deceive the investigator. The banging of a hand against the witness box could be done without causing much pain, and the applicant's demonstration thereof was reproduced by the respondents' medical witness. His Honour Judge Thesiger held that there was some loss of sensation, but the applicant had exaggerated his claim. The onus of proof was upon the applicant that the effects of the accident were sufficient to prevent him from working and he had not discharged that onus. The applicant was therefore not entitled to an award, but only to a declaration of liability.

Land and Estate Topics.

By J. A. MORAN.

THE creation of a fund to compensate property owners for losses incurred through war would help to increase confidence, and it is well to remember that about two years ago, the Property Owners' Protection Association started what has since proved to be a successful scheme of war risk for their members, with an annual premium of 2s. per £100 value. In the event of war, the fund would be shared among those whose property was damaged or destroyed. If there are no hostilities before 1947 the whole of the subscriptions are returnable. The value of the property insured under this scheme is already in the region of £150,000,000.

The Court of Appeal has decided that where a landlord's agent received the key of a house from an outgoing tenant and, a few minutes later, handed over the key to a new tenant, the landlord had obtained actual possession of the house within the meaning of the Rent Acts, and the house thereby became decontrolled.

The Nottingham Corporation is to appeal against the decision of Mr. Justice Simonds in the Chancery Division, that a corporation must not demolish property under a clearance order without providing equivalent support for adjoining premises.

Sir Robert Pickard, Vice-Chancellor of the University of London, presided at the annual distribution of prizes of the College of Estate Management. The re-organisation of their examinations by the University of London, the Chartered

Surveyors' Institution, the Auctioneers' Institute, and the Land Agents' Society, has thrown much additional work on the college staff, but Mr. Adkin and his assistants have a knack of always coming out on top. Even when it came to a game of cricket, after the distribution, the staff did not desert him—they beat the students by five wickets.

There is no longer any speculation as to the identity of the purchaser of the Duke of Norfolk's Littlehampton estate. The new owner is Mr. C. H. Hubbard, who has been for several years one of Mr. W. L. Stevenson's right-hand men in Woolworths.

The late Alderman D. N. Royce, of Oakham, left £500 each to the Benevolent Funds of the Chartered Surveyors' Institution and the Auctioneers' Institute.

Milton Court, near Dorking, which the late Sir Harry Mallaby-Deeley acquired in 1936, has been sold, with about thirty acres, on behalf of Lady Mallaby-Deeley. In 1599 Queen Elizabeth disposed of the place to George Evelyn, who had made a fortune by his gunpowder mills at Long Ditton and Wotton. With the Evelyn family Milton Court remained until it was bought, in 1864, from Mr. W. J. Evelyn of Wotton.

"Fergusson's Gang," the anonymous organisation which, in the past few years, made several mysterious donations to the National Trust, has turned up again. At the last annual meeting of the Trust a £100 note was handed in at the door just before the proceedings began. It was contained in a small china receptacle with a typewritten label inscribed "To the National Trust affectionately. Bust this fruit and you will find the Kernel greatly to your mind." The label was signed "Fergusson." The whole was contained in a chemist's box.

Mr. John Hubert Pardoe, the new President of the Land Agents' Society, was educated at Haileybury and the Royal Military College, and received a commission in the East Yorkshire regiment in 1901. Owing to complications resulting from a riding strain, he was invalided out of the Army, and soon afterwards went, as pupil, to Mr. A. P. Payne-Gallway, then agent to the Duke of Rutland's Derbyshire estates. At present he has charge of many important landed properties.

The police station at Robin Hood's Bay, now in the market, should make the ideal seaside boarding establishment, if landlords are really what they are represented to be. For, in addition to a few bedrooms, living room, kitchen, and pantry, there are some cells which might serve a useful purpose: noisy guests could be locked up there until they promised to turn over a new leaf.

Lutwyche Hall, between Wenlock and Church Stretton, now to let, is said to have been the residence for a time of Thomas Moore, the Irish poet. In addition to his Irish melodies, Moore was the author of "Lalla Rookh," a series of Oriental tales, in verse. "No," said Lady Holland to him one day, "I have not read your 'Larry O'Rourke'; to be candid with you, I don't like Irish stories."

Books Received.

The Journal of Comparative Legislation and International Law. Third Series. Vol. XXI, Part III. August, 1939. Edited by F. M. GOADBY, D.C.L. London: Society of Comparative Legislation. Annual Subscription, £1 1s.

The Local Government of the United Kingdom. By JOHN J. CLARKE, M.A., F.S.S., of Gray's Inn, and the Northern Circuit, Barrister-at-Law. Twelfth Edition, 1939. Demy 8vo. pp. xx and (with Index) 967. London: Sir Isaac Pitman & Sons, Ltd. 15s. net.

The death of Mr. Francis Richard Turner Bloxam, formerly Taxing Master of the Supreme Court, occurred at Ealing on 4th August. Mr. Bloxam was in his eighty-ninth year.

To-day and Yesterday.

LEGAL CALENDAR.

7 AUGUST.—Highwaymen in the eighteenth century were recruited from all classes and types. Of three condemned to death at Chelmsford Assizes on the 7th August, 1747, Thomas Giles kept an alehouse near Hanover Square, Mathias Kings had been a drawer in Bristol, and William Farrer was the brother of a London factor. The last two were described as "genteel young fellows." Farrer, who had robbed the King of Sardinia's messenger, was ordered to be hanged in chains. He had had the misfortune to go into the same inn as the post-boy of the chaise he had stopped.

8 AUGUST.—When Madame Crespy, a minor poetess, was tried at Azen for the murder of the Abbé Chassaing, two versions of the facts were put forward. The prosecution alleged that she had pestered him with unwanted attentions and ridiculous poems, and that he had described her as a dangerous nuisance. Her story was that their relations had been of quite another sort and that he had shot himself in despair at their approaching separation. The fact that instead of rushing to the assistance of the dying man she had employed her energies in keeping her mother and sister out of the room tended against her, but on the 8th August, 1913, she was acquitted.

9 AUGUST.—Henry Macray, who was condemned to death at Kingston Assizes on the 9th August, 1735, for a robbery committed on Barnes Common, was a specialist in marshalling evidence. Once before he had got off at the Old Bailey by the impressive nature of the witnesses he was able to call for the defence. At Kingston he had produced fourteen well-dressed persons who swore that during the whole week of the "hold-up" he was ill in bed. This time, however, they did not save him from being condemned to hang in chains. When they realised that Mr. Baron Thompson suspected them, they slipped quietly out of court. Subsequently several of them were arrested by the judge's order and prosecuted for perjury.

10 AUGUST.—On the 10th August, 1846, Sir Charles Wetherell received injuries in a carriage accident from which he died.

11 AUGUST.—Murder will out. On the 11th August, 1759, at Nottingham Assizes, an old man of seventy-four was tried for the murder of a bastard child thirty-four years before, the chief evidence against him being his younger brother. After half an hour's retirement the jury found him guilty and he was condemned to be hanged and anatomised. The high sheriff and the grand jury obtained him a respite of a month.

12 AUGUST.—On the 12th August, 1818, George Chennel was tried at Guildford Assizes for the murder of his father, together with John Chalcraft, his accomplice. The old man was a prosperous currier of Godalming who lived alone with his housekeeper. The son had long been on very bad terms with them and had repeatedly spoken of them in the vilest manner. When, therefore, they were found with their throats cut one morning, suspicion fell on him, and eventually on the evidence of a young woman who said she had kept watch outside the house while the crime was committed he and his friend were convicted and hanged.

13 AUGUST.—On the 13th August, 1862, Walter Moore, a tailor, was tried at Lancaster Assizes for the murder of his wife. They had lived unhappily together and she had gone to live with her uncle. Mad with jealousy because he thought that love for her young cousin was the cause of her desertion, he followed her and cut her throat as she was cleaning the kitchen fire-irons. As she lay dead he kissed her corpse. He was condemned to be hanged.

THE WEEK'S PERSONALITY.

Having attained the age of seventy-six, Sir Charles Wetherell might reasonably have looked for a peaceful end, but on the 10th August, 1846, an open fly in which he was driving from Maidstone to Rochester overturned on a heap of stones and he sustained concussion from which he died in a week. In his day he had been a notable figure in the courts, with abilities which might well have carried him beyond the office of Attorney-General, the highest legal honour which fell to him. Perhaps his initial mistake was to practise at the Common Law Bar instead of confining himself to the Equity Courts where his varied knowledge and black-letter reading would have had much more effect than in the realm of the jury, for he was too scholastic and metaphysical for the plain man in the box. Thus, though he did not lack eloquence and energy, his success was not proportionate to his qualities. He was a strong Tory, and during the great riots at Bristol, of which city he was Recorder, he ran a considerable risk of being killed by the mob. It is said that he escaped in the disguise of a clean shirt and a pair of braces, for he habitually neglected his personal appearance. At the Bar and in politics he was always fair and honourable.

ALL IN PUBLIC.

At the Manchester Assizes recently, Mr. Justice Croom-Johnson, after condemning a man to six months' imprisonment, cancelled the sentence on further reflection and bound him over. "Although I could have altered your sentence behind the scenes," he said, "I thought it better that you should come before me in public and that I should indicate why I am doing that which I am about to do." Some judges prefer to be merciful by stealth, others have mercy secretly thrust upon them. Of the former, Mr. Baron Martin, after passing a severe sentence would sometimes modify it in favour of the prisoner before signing the calendar. Of the latter, that William O'Brien whose behaviour on the Irish Bench aroused so much criticism used to pass the most erratic sentences, sometimes ferocious, sometimes sentimentally lenient. Some of the more farcically heavy punishments inflicted by him appeared upon the Crown Book with the spoken word discounted by as much as 80 per cent.

BEHIND THE SCENES.

In the sentencing of prisoners, Mr. Justice Day had a system all his own. The heavy punishments he distributed in open court struck terror into the hearts of the members of the criminal classes listening in the public gallery. Then, having produced the desired effect of frightening them out of their wits, he would revise his sentences without any publicity when he came to sign the calendar. Once public indignation was thoroughly roused when at Carlisle Assizes he condemned a man to five years' penal servitude for stealing a waistcoat. "Faith," said an Irish member of the Bar, "if the fella had stolen a suit of clothes he would have hanged him." The storm reached the House of Commons and the Home Secretary was asked a question about this exploit of Day, J. To everyone's surprise he answered: "It is not a fact that John Jones was sentenced to five years' penal servitude for stealing a waistcoat." There was consternation in the House as the questioner had been in court at the time. Then the Home Secretary continued: "I hold in my hand the calendar, and it appears that John Jones was sentenced to six months' imprisonment."

The Ministry of Health has issued a booklet giving a general outline of the national schemes of health insurance and contributory pensions insurance in the United Kingdom. The booklet has been written primarily for those who have no special knowledge of the subject but who desire concise information concerning the structure and administration of the schemes. It is entitled "National Health Insurance and Contributory Pensions Insurance," and is obtainable from H.M. Stationery Office, price 6d.

Notes of Cases.

Court of Appeal.

The "Ithaka"

Scott, MacKinnon and Finlay, L.JJ. 4th July, 1939.

SHIPPING—SALVAGE AGREEMENT—ARBITRATION—PROCEEDINGS IN FOREIGN COURT TO SET ASIDE AGREEMENT—MOTION TO STAY ARBITRATION PROCEEDINGS.

Appeal from Bucknill, J.

On the 20th November, 1938, a German steamship was stranded in Turkish territorial waters. The master considered it was easy to get her off by lightening her and that there was no cause for salvage. The only salvors allowed under Turkish law were a company in which the Government had an interest and which controlled all the lighters in the Hellespont. They carried on their salvage business by taking agreements on Lloyd's Standard Form of Salvage Agreement, providing that salvage should be paid on a "No cure, no pay" basis in the event of success, the amount being unspecified, and also providing for arbitration as to the amount. The master, being unable to obtain lighters for lightening the ship without signing the agreement, did so, making an oral protest. Pursuant to the agreement, the owners obtained through a bank in London a banker's undertaking for security for the claims against the ship, freight and cargo, and the ship was released. On the 31st December, the agents of the owners with their authority gave notice to the Committee of Lloyd's that their principals wished the matter to proceed to arbitration, and an arbitrator was duly appointed. Subsequently the owners began proceedings in the Turkish courts for a declaration that the agreement was entered into under duress, and was, therefore, invalid. In March, 1939, they sought by motion to postpone the arbitration proceedings indefinitely. Bucknill, J., dismissed the motion and the owners appealed. They intimated that they would be content with an order postponing the arbitration proceedings till after the conclusion of the action in Turkey, and thereafter if there were an arbitration award, they were willing to pay such interest on it as the court thought right. They were also willing that, whatever the result of the action in Turkey might be, the £12,000 should remain available pending any proceedings the salvors might take in England, Germany or Turkey.

SCOTT, L.J., dismissing the appeal, said that no protest against the agreement was recorded on the document. The judge considered that the master, however little he wanted to sign the agreement, did so with his eyes open, and in the circumstances there was no ground for the Admiralty Court to intervene in its equitable jurisdiction and say that the arbitration clause should be treated as ineffective. The arbitration proceedings having started pursuant to the request in December, it would be unfair to the Turkish salvors to say that it should not go through. If the arbitrator thought there was only a slight aspect of salvage he would be able to do effective justice by making his award accordingly. The owners would not really be prejudiced by the arbitration being held.

COUNSEL : Willmer, K.C., and J. Hewson ; Pilcher, K.C., and O. Bateson.

SOLICITORS : Bentleys, Stokes & Lowless ; Middleton, Lewis & Clarke.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Newcastle-under-Lyme Corporation v. Wolstanton, Ltd. and Attorney-General of the Duchy of Lancaster.

Clauson, Luxmoore and Goddard, L.JJ.

4th July, 1939.

MINES AND MINERALS—CLAIM FOR INJUNCTION TO RESTRAIN WORKING SO AS TO LET DOWN SURFACE—PLEA OF CUSTOM OR PRESCRIPTIVE RIGHT TO LET DOWN SURFACE WITHOUT COMPENSATION.

Appeal from Farwell, J.

The plaintiffs sought a declaration that the defendants were not entitled to mine under their land so as to let down the surface, and claimed an injunction. The defendants pleaded (*inter alia*) a custom and a right by prescription to let down the surface without paying compensation. Farwell, J., held that such a custom or prescriptive right was unreasonable and invalid and could not be pleaded.

CLAUSON, L.J., dismissing the defendant's appeal, said that in 1841 Lord Granville was working mines within the manor of Newcastle-under-Lyme under a lease or licence from the Duchy of Lancaster. The owner of two houses built on a copyhold chose, parcel of the manor, sought an injunction restraining him from so working them as to damage the foundations of his houses. On a motion (*Hilton v. Lord Granville*, Cr. & Ph. 283) Lord Cottenham, L.C., gave the plaintiff liberty to bring such action as he might be advised, directing that the defendant should admit on the trial that the working of the mines had damaged the foundations, the object being to enable the appropriate court to determine whether the lessee of the mines had a good defence on the ground that there was a valid custom in the manor which gave the lord and the lessee or licensee claiming under him the right to mine in such a manner as to damage the plaintiff's houses. In 1844, the Court of Queen's Bench held, in *Hilton v. Lord Granville*, 5 Q.B. 701, that the lord could not mine so as to occasion damage without paying compensation, on the ground that, assuming such a usage was proved, it could not be the foundation of a custom recognised as valid by the courts because it was unreasonable. In the present action, commenced in 1938, the defendants relied on the same plea relied on in the earlier action. On the hearing of a preliminary point of law whether the custom or prescriptive right alleged could not be sustained or ought not to be presumed as unreasonable, Farwell, J., held that the question had already been determined by the Queen's Bench. The Court of Appeal were not strictly bound by that decision, but it had not been challenged since it was given, and in 1883 it had been approved by Baggalay, L.J., in *Bell v. Love*, L.R. 10 Q.B.D., at p. 561. On the question of the overruling of long-standing decisions, his lordship referred to Beal on "Cardinal Rules of Legal Interpretation" (3rd ed.), p. 16, and said that the decision here was not manifestly erroneous, had long stood unchallenged and had affected the conduct of all those within the manor who were concerned with matters of this kind. It was binding on this court. His lordship had treated the matter as one of custom, but Farwell, J., was right in holding that the decision on that point also covered the matter of prescription so far as it was raised by the appeal.

LUXMOORE and GODDARD, L.JJ., agreed.

COUNSEL : Slade, K.C., and Tonge ; Sir Herbert Cunliffe, K.C., Romer, K.C., and Andrewes Uthwatt ; Harman, K.C., Radcliffe, K.C., and Wilfrid Hunt.

SOLICITORS : Hancock & Willis, for Ellis & Ellis, of Burslem ; The Solicitor, Duchy of Lancaster ; Sharpe, Pritchard and Co., for Joseph Griffith, Town Clerk, Newcastle-under-Lyme.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

Batchelar v. Evans.

Farwell, J. 4th July, 1939.

ADMINISTRATION—MORTGAGE DEBT—ACTION AGAINST EXECUTORS—NO DEFENCE—JUDGMENT—ADMINISTRATION ACTION BY BENEFICIARIES—ADMINISTRATION ORDER—ISSUE OF WRIT OF *fiat facias* BY JUDGMENT CREDITOR—SHERIFF'S RETURN OF *nulla bona*—EFFECT.

In 1930, a sum of £2,000 advanced by S.B. to L.D. was charged on leasehold property held by L.D. for a long term of years. S.B. died in 1931. L.D. died in 1933. In 1936, the administrator of S.B. brought an action in the King's Bench

Division against the executors of L.D., claiming payment of the amount due under the mortgage. No defence was put in and on the 15th April, 1936, leave to sign judgment was given to the plaintiff. On the same day two beneficiaries under the will of L.D. brought an action against her executors for administration of her estate in the Chancery Division, and on the 21st April, 1936, on a motion, a receiver was appointed and pursuant to the court's order the executors let him into possession of the real and leasehold properties of L.D. and handed over the personal estate to him. On the 24th June, 1936, it was ordered that the estate should be administered by the court. In March, 1937, the administrator of S.B. issued a writ of *fiery facias* to enforce his judgment. In due course the sheriff made a return of *nulla bona*. In July, 1937, the administrator of S.B. began an action claiming payment of the mortgage debt by the executors of L.D. personally, contending that, as the judgment in the King's Bench having gone by default was conclusive evidence that they then had sufficient assets in their hands to pay the mortgage debt, the return of *nulla bona* was evidence that they had committed a *devastavit*.

FARWELL, J., said that the King's Bench judgment was conclusive against the defendants, so far as it went, as an admission of assets and the return of *nulla bona* raised a presumption that a *devastavit* had been committed by them. But the presumption was rebuttable, and it was open to the defendants to show, if they could, why there had been the difference between the date of the judgment, which was an admission of assets, and the date of the return of *nulla bona*, when the assets were no longer in their hands, and to establish that the reason did not lie in any *devastavit* committed by them: *Leonard v. Simpson* (1835), 2 Bing. (N.C.) 176. Here the defendants had shown that after the judgment and before the writ of *fiery facias* the court had appointed a receiver and made an administration order and ordered the receiver to get in the assets of L.D. They had shown conclusively that the return of *nulla bona* was not due to a *devastavit*, but to the fact that the Court of Chancery had intervened and made itself master of the assets. The plaintiff was not entitled to an order against the defendants personally, but had his remedy in the administration action.

COUNSEL: *Slade, K.C.*, and *Winterbotham; Roxburgh, K.C.*, and *J. L. Stone*.

SOLICITORS: *T. D. Jones & Co.*, for *F. N. Powell, Son and Pritchard*, of Llanelli; *R. I. Lewis & Co.*, for *Leslie Williams*, of Llanelli.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Hayes v. Mills & Knight, Ltd.

Tucker, J. 24th May, 1939.

Factories and Workshops—Repairs to Ship—Workman Injured by Object Falling from Staging through Fellow-workman's Negligence—"... Occupier shall ... Minimise Risk ..."—Occupier's Liability—Shipbuilding Regulations (S.R. & O., 1931, No. 133, Regs. 31, 52).

Action for damages for personal injury.

The plaintiff, a riveter, was effecting repairs to the keel of a hopper while in the defendant company's employment. Above where he was working, other men were at work on a girder. For that purpose staging was erected along and on each side of the girder, about four feet below it; and between the two sets of staging there was a gap some 21 inches wide. One of the men working on the staging used in connection with his work to the girder a piece of timber quartering, 4 to 5 feet long and 4 inches by 2½ inches in section. By reason of the vibration of the staging caused by the working of the men at the girder, the quartering fell from the staging and struck the plaintiff, causing him the injuries in respect of which he brought this action. By reg. 31 of the Shipbuilding Regulation made under the Factory and Workshop Act, 1901,

"The occupier shall as far as practicable take steps to minimise the risk arising from loose ... materials being left ... in any place from which they may fall on persons ...". By reg. 52 "no person employed shall ... (b) leave any loose ... materials ... in any place from which they may fall on persons ...". By s. 85 (2) of the Act of 1901 "if any person other than an occupier, owner or manager, who is bound to observe any regulation under this Act ... fails to comply with the regulation, he shall be liable ... to a fine ... and the occupier ... shall also be liable to a fine ... unless he proves that he has taken all reasonable means by publishing, and ... enforcing the regulations to prevent the ... non-compliance."

TUCKER, J., said that, on reg. 52, counsel for the plaintiff argued that, if he had proved that a person employed had left a loose article, namely, the piece of quartering, on the staging in a position from which it might fall, and, in fact, had fallen, then the defendants could be made liable under s. 85 (2). That subsection made the occupier liable for a breach of regulation by an employee unless he could prove certain things. If an occupier failed to discharge the burden thus placed on him, he had probably himself committed some breach of regulation. He (his lordship) did not decide what the effect of the section would be in a case where the workman had committed some breach and the employer had failed to discharge the burden on him—whether that would give an injured person a cause of action against the employer. Such a case seldom arose in practice. The real point for decision seemed to be whether the defendants had contravened reg. 31. An employee had put the piece of quartering into position negligently. For that act in itself, the defendants were not responsible, but it was just the kind of risk contemplated by reg. 31; and the defendants had taken no steps to minimise it. They said that to do so was not really necessary, and that there was no reasonable risk; that they had a proper staging and did what was normal; and that it was not the practice to fill up the gap between the two sets of staging. It had been suggested for the plaintiffs that a tarpaulin might have been slung under the gap. Without saying that it was negligent not to do that, he (his lordship) did not think that it could be said that it was not practicable to do so. It would have been practicable, and, had it been done, the accident to the plaintiff would not have occurred. There must be judgment in his favour for £750.

COUNSEL: *H. D. Samuels, K.C.*, and *E. Terrell; J. Alun Pugh*.

SOLICITORS: *Shaen, Roscoe, Massey & Co.; Carpenters*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Stevens v. Tirard.

Lawrence, J. 26th May, 1939.

REVENUE—INCOME TAX—DIVORCE—CHILDREN IN WIFE'S CUSTODY—HUSBAND ORDERED TO PAY WIFE SPECIFIC SUMS FOR MAINTENANCE OF CHILDREN—WHETHER INCOME OF WIFE OR OF CHILDREN—FINANCE ACT, 1920 (10 & 11 Geo. 5, c. 18), s. 21 (3).

Appeal by case stated from a decision of the Commissioners for the General Purposes of the Income Tax.

The respondent taxpayer, Tirard, appealed to the General Commissioners against additional assessments made on him under Sched. D to the Income Tax Act, 1918, for the years 1933 to 1938. At the hearing before the Commissioners the following facts were admitted or agreed: In 1929 the respondent was divorced by his then wife and she was given the custody of the three children of the marriage. By an order of the High Court dated 21st January, 1930, the respondent was ordered to pay to his former wife (1) £500 a year during their joint lives for her maintenance, and (2) for the maintenance and education of the three children the sums of £90, £90 and £70 a year, less tax, during the joint lives of

the respondent and the wife until the children should attain the age of twenty-one or marry under that age. The respondent had paid his former wife the above-mentioned sums (less tax), and she, as guardian of the children, had preferred repayment claims on their behalf on the basis that the sums paid for their maintenance were their income. Those claims had been allowed. For the years in question the respondent claimed and was allowed children's allowance in respect of the three children in the first assessments made on him. The respondent's returns for income tax did not disclose the amounts of the sums payable to his former wife in respect of each child, but merely referred to them as "share in alimony." On the attention of the appellant being drawn to the claims for repayment made on behalf of the children, the additional assessments under appeal were made on the respondent. The General Commissioners discharged the additional assessments and the Crown appealed.

LAWRENCE, J., said that the additional assessments which had been discharged by the Commissioners had been made on the footing that each of the respondent's three children was entitled in his or her own right to an income exceeding £50 a year within the meaning of s. 21 (3) of the Finance Act, 1920, and therefore that the respondent could not claim a deduction in respect of them. The Solicitor-General, in support of his contention that the children were entitled in their own right to the sums stated in the order, argued that the respondent's former wife, although not bound to account for the expenditure of the sum paid to her under the order, was in the position of a sort of guardian, and that her interposition between the payer (the respondent) and the children did not alter the fact that the money paid to her for the maintenance of the children was their money in their own right any more than would the creation of a trust in which the trustees were interposed between the settlor of the *cestui que trust*. Counsel for the respondent, on the other hand, relied on the fact that in each of the cases cited by the Solicitor-General there was a trust under which the children were *cestui que trust* and the child's title to the income depended on that trust and not merely on the payment by the trustee to his guardian for maintenance. Counsel further contended that the legal position of a guardian who was not accountable for the use of property paid to him for the maintenance of the infant, but was only under an obligation properly to maintain the infant out of the property, was not the same as that of a trustee of property, and that it could not be said that the property was the property of the infant in his own right. The appeal must be dismissed.

COUNSEL: *The Solicitor-General* (Sir Terence O'Connor, K.C.) and *R. P. Hills*; *Cyril King*, K.C., and *F. Grant*.

SOLICITORS: *Solicitor of Inland Revenue*; *Reynolds, Sons and Gorst*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Batty v. Schröder.

Lawrence, J. 26th May, 1939.

REVENUE—INCOME TAX—PARTNERSHIP—NEW TRADE SET UP—LOSSES OF OLD PARTNERSHIP—WHETHER PARTNER ENTITLED TO SET OFF PREVIOUS LOSSES AGAINST PROFITS OF NEW PARTNERSHIP—FINANCE ACT, 1926 (16 & 17 Geo. 5, c. 22), ss. 32 (1), r. 11 (1), 33.

Appeal by case stated from a decision of the Commissioners for the Special Purposes of the Income Tax.

Four persons, including the respondent, Schröder, carried on a certain business in partnership until the end of February, 1932. That partnership made a trading loss in the year ending December, 1931. On the 1st March, 1932, a new partnership was constituted, a new member joining, and the same business being carried on. On the 14th April all the existing partners gave notice under the proviso to r. 11 (1) of s. 32 (1) of the Finance Act, 1926, which notice required that the tax payable should be computed as if the trade had been discontinued on

the 29th February, 1932, and a new trade had been set up on the 1st March. Up to the end of February, 1932, the respondent bore two-thirds, and one Tiarks one-third, of any loss, the other partners not bearing any loss, but all the partners sharing in the profits in definite proportions. No relief under s. 33 of the Finance Act, 1926, had been given for any of the years 1932-33 to 1935-36 in respect of the balance of the loss sustained by Schröder and Tiarks in the year ending in December, 1931. In the case of each the loss was sufficient to absorb the aggregate amount of his share of the assessed profits of the new partnership for the years 1932-33 to 1935-36, inclusive, and to leave a balance in excess of his share of the assessed profits of the new partnership for the year 1936-37. Schröder accordingly preferred a claim to the Special Commissioners under s. 33 of the Finance Act, 1926, by way of appeal against that part of the assessment under Sched. D to the Income Tax Act, 1918, made on the partnership for the year 1936-37, which by virtue of s. 33 (2) was taken as "the amount of profits or gains on which he is assessed for that year." The ground of claim was that a certain sum should be set-off against that portion of the assessment in respect of the losses above referred to. Tiarks preferred a similar claim. It was contended for Schröder, *inter alia*, that the relief given by s. 33 was a personal relief in favour of the individual, and that that was equally so in the application of the section to a loss sustained by a partner in a partnership, the proviso to r. 11 (1) in s. 32 (1) of the Act of 1926 having, as was contended, no reference to personal reliefs in favour of individuals; and that the proviso did not interfere with the individual's right to relief under s. 33. It was contended for the Crown that the exercise of the option under the proviso had the result that, as from the date of the change in the partnership, the trade of the new partnership fell to be treated for all purposes of the Income Tax Acts as a new trade different from the old partnership. The Commissioners held that, as r. 11 (1) of s. 32 (1) and the option under the proviso to r. 11 (1) were directed to the manner in which "the tax payable shall be computed" in case of a change in a partnership, the computation throughout was concerned with the assessments to be made, and, with regard to each assessment, with the period on the profits or gains of which it was to be based. It was accordingly only in relation to those matters of assessment that the trade was to be treated, where the option was exercised, as if it had been discontinued and succeeded by a new trade. They therefore held that the claim succeeded in principle. (*Cur. adv. vult.*)

LAWRENCE, J., said that the Solicitor-General argued that a passage in the judgment of the Court of Appeal in *United Steel Companies v. Cullington*, 55 T.L.R. 417, at p. 421. meant that computation of tax in the proviso to r. 11 (1) included the final ascertainment of tax, which involved the giving of all proper allowances, including allowance for losses, and that, as that computation and charge was to be made as if a new trade had been set up, losses could not be set against the profits of the new trade, having regard to the words of s. 33. He (his lordship) had come to the conclusion that the Crown's contention as to the meaning of the Court of Appeal's reasoning was correct, and the appeal must be allowed.

COUNSEL: *The Solicitor-General* (Sir Terence O'Connor, K.C.), and *R. P. Hills*; *A. M. Latter*, K.C., and *F. Heyworth Talbot*.

SOLICITORS: *The Solicitor of Inland Revenue*; *Slaughter and May*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Bush, Beach & Gent, Ltd. v. Road.

Lawrence, J. 26th May, 1939.

REVENUE—INCOME TAX—COMPANY SELLING INDUSTRIAL CHEMICALS—CONTRACT ENTERED INTO FOR PURCHASE OF AGRICULTURAL CHEMICAL—NEW BRANCH OF BUSINESS—SUM PAID TO COMPANY FOR RIGHT TO TERMINATE CONTRACT—WHETHER CAPITAL OR REVENUE RECEIPT.

Appeal by case stated from a decision of Commissioners for the General Purposes of the Income Tax Acts.

The appellants were a private limited company incorporated in 1920 and carrying on the business of chemical merchants. By a contract made in 1933 between the appellants as buyers and the agents of another company as sellers, it was provided, *inter alia*, that the sellers should deliver to the appellants specified quantities of potash salts, which are an agricultural chemical, from Spain; that in 1934 the appellants should take 1,100 to 1,200 tons of salts; and that in each of the succeeding four years the appellants should have an option to take a specified larger quantity on the same terms, the contract to be terminated if option not exercised by the 28th February in any year. After the contract had been in operation for some years the sellers wished to change their marketing arrangements, and the ensuing negotiations resulted in an arrangement whereby the contract was terminated on the sellers' paying the appellants £4,750 as an indemnity. It was stated in evidence, on behalf of the appellants, that the contract with the sellers involved the appellants' entry into a new field of business, as they had previously sold only industrial chemicals, and the setting up of a new sales organisation; no addition to premises, plant or machinery was, however, rendered necessary, but an entirely different class of advertising was entailed by the new class of customer in the business. The appellants were entitled under the contract to sell the salts at the best price obtainable, and they received a discount on their purchases from the sellers. The sum of £4,750 bore no relation to the estimated profits to be derived from the appellants' sales of the salts during the remainder of the contract period. The appellants paid £250 of that sum to an agent as compensation. The appellants appealed to the General Commissioners against an assessment to income tax made on them under Schedule D to the Income Tax Act, 1918, which included that part of the £4,500 referable to the year of assessment in question. It was contended on their behalf that the cancellation of the contract destroyed the whole of their business in agricultural chemicals, for which loss they received the £4,500 as compensation; alternatively, that the £4,500 was paid as compensation for the sterilisation of a capital asset; and that it was, in any event, a capital receipt. It was contended for the Crown that the appellants' business was that of chemical merchants, and that the sale of chemicals for agricultural purposes did not constitute a separate business; that the cancellation of the contract did not affect the structure of the appellants' business as a whole; that the £4,500 represented future profit; and that it constituted a revenue and not a capital receipt. The Commissioners decided in favour of the Crown, and the company now appealed. (*Cur adv. vult.*)

LAWRENCE, J., said that in his opinion the present case was more closely analogous to cases like *Short Brothers v. Inland Revenue Commissioners*, 12 T.C. 955, and *Inland Revenue Commissioners v. Northfleet Coal & Ballast Co.* 12 T.C. 1102, than to those like *Van den Berghs, Ltd. v. Clark* [1935] A.C. 431. The £4,500 in his opinion represented profits which the appellants would or might have made under the contract, and not the purchase price of the contract itself. The structure of the appellants' business was not affected by the cancellation as in *Van den Berghs, Ltd. v. Clark, supra*, for they could always and could still sell agricultural chemicals. The contract was made in the ordinary course of business, though in a new field. Rowlatt, J.'s dictum in *Chibbett v. J. Robinson & Sons* (1924), 132 L.T. 26, at p. 31, was clearly too wide: see *Hunter v. Dewhurst* (1931-2), 145 L.T. 225, at p. 230. *Henderson v. Made-King*, Tax. Cas. Leaflet, No. 963, was distinguishable. The appeal must be dismissed.

COUNSEL: F. Heyworth Talbot; The Attorney-General (Sir Donald Somervell, K.C.) and R. P. Hills.

SOLICITORS: Blundell, Baker & Co.; The Solicitor of Inland Revenue.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Parkinson v. Parkinson.

Bucknill, J. 24th and 26th May, 1939.

DIVORCE—PETITION FOR DISSOLUTION ON PRESUMPTION OF DEATH—BURDEN OF PROOF—SEPARATION DEED—COMPARISON WITH EVIDENCE OF DISAPPEARANCE IN BIGAMY PROSECUTIONS—OFFENCES AGAINST THE PERSON ACT, 1861 (24 and 25 Vict., c. 100), s. 57—MATRIMONIAL CAUSES ACT, 1937 (1 Edw. 8 and 1 Geo. 6, c. 57), s. 8, subs. (2).

This was a husband's undefended petition for a decree of presumption of death and dissolution of marriage.

The parties were married in 1919, the husband being twenty-four and the wife twenty years old. She was a cotton weaver, and he, at the time, was a tram driver. In 1922 the wife left the husband, saying that she was going to Blackpool and was going for good. In July of that year the parties entered into a separation deed. Thereafter the husband once met his wife by accident at Burnley in 1928 and had a few minutes' conversation with her. He saw no more of her nor had any news of her. Prior to filing his petition on the 24th June, 1938, he had made inquiries in Blackpool in 1937 and advertisements were inserted in the *Daily Telegraph* and the *News Chronicle* without result.

BUCKNILL, J., in giving judgment, after stating the facts and dealing with the evidence, observed that, of course, the deed had the effect of preventing the husband from asking for a decree of dissolution of marriage on the ground of desertion. Turning to s. 8 of the Act to see what the law was, the new provision of the Act granted to a spouse the right to a dissolution of his marriage if he could satisfy the court that there were reasonable grounds for supposing that his wife was dead. It was quite clear that "disappearance" was not synonymous with "death." Indeed, it might be that a person disappeared in order to avoid the risk of death, and that, where a woman, apparently in good health, and under forty years of age, was married, and not heard of in her native town for a period of time, no court could say that they were satisfied that there were reasonable grounds for supposing that she was dead. In order to get over the difficulty which existed of proving death where the party had merely disappeared, s. 8 (2) has been enacted, and it was on that subsection that counsel for the petitioner based his case. The subsection provided as follows: "In any such proceedings [for dissolution of the marriage on the ground of the death of the party], the fact that for a period of seven years or upwards the other party to the marriage has been continually absent from the petitioner, and the petitioner has no reason to believe that the other party has been living within that time, shall be evidence that he or she is dead until the contrary is proved." It was important to mention at first that continual absence from the petitioner, in a case where the wife had bound herself to live separate and apart from him, proved very little, and that therefore it was rather difficult to say that in a case of that kind the subsection applied. However, researches by counsel brought to notice first of all that the section followed very closely the wording of the Offences Against the Person Act, 1861, s. 57, dealing with the offence of bigamy, which had the following proviso: "Provided that nothing in this section contained shall extend to any second marriage . . . or to any person marrying a second time whose husband or wife shall have been continually absent from such person for the space of seven years then last past, and shall not have been known by such person to be living within that time . . ." The first part of that proviso was identical with s. 8 (2), and used the precise words, "shall have been continually absent from such person for the space of seven years," and counsel argued that, whereas a continual absence for seven years since 1861 provided a defence to a charge of bigamy, the new Act of 1937 now gave the petitioner a substantive right to get his marriage dissolved, and counsel

referred to *Jones v. Jones*, an unreported case decided in November, 1938, in which the President pointed out the similarity between the two sections, and indicated that it was his view that the new Act was intended to provide a substantive remedy, on proof of facts which had hitherto provided a defence to a charge of bigamy. The words certainly were most general in their terms. All that the petitioner had to prove was that his wife had been continually absent from him. There was no limiting word dealing with a case where there had been a deed of separation. Indeed, the words were so wide that they would seem to cover even the case where the petitioning husband had himself deserted the wife and left her for seven years. That that was the law under the Act of 1861 was clear from *R. v. Faulkes* (1903), 19 T.L.R. 250, where the husband was charged with bigamy and it appeared from the facts proved that he had, in fact, deserted his wife, and that that was the reason why she had been continually absent from him for the space of seven years then last past. It was argued in that case that the proviso about criminal absence did not apply in a case where the man had deserted his wife. Kennedy, J., in directing the jury to find a verdict of acquittal, said that in his opinion, "absent" meant "not with," and the proviso applied equally both to those who might be called innocent parties and to wilful deserters. Then there was a second point which troubled him (his lordship), and that was whether or not the burden lay on the petitioner to satisfy the court, that he had no reason to believe that his wife was living within those seven years. Counsel for the petitioner argued that again the same rule applied as that which applied in the Act of 1861, and relied upon *R. v. Curgerwen* (1865), L.R. 1 C.C. 1. One important thing to notice, when one compared the two sections, was that, although the first part of s. 57 had been carefully followed in s. 8 (2) of the Act of 1937, the latter part of the section had not. Section 57 went on to say: "and shall not have been known by such person to be living within that time." On the other hand, s. 8 (2) said: "and the petitioner had no reason to believe that the other party has been living within that time." How was it possible for the court to know whether the petitioner had any reason to believe that his wife had been living within the seven years, unless the petitioner himself gave evidence on the point. In his (his lordship's) view, the marked difference in the language in the second part of the subsection, indicated that under subs. (2) it was for the petitioner to give evidence as to whether he had no reason to believe that his wife was living within that time. There was a last point, namely, whether or not, on the facts of the present case, the court could say that the petitioner had no reason to believe that his wife was living within the last seven years. The facts as disclosed left the matter one of pure speculation. There was no reason to say that the wife had been alive within that time, any more than there was any reason to say that she had died. That being so, the court was entitled to hold that there was in fact no reason to believe that the wife had been living within that time. The petitioner, therefore, had brought himself within s. 8 (2) and there would be a decree of presumption of death and a decree *nisi*.

COUNSEL: *William Latey*, for the petitioner.

SOLICITORS: *Kinch & Richardson*, for *Donald Race*, Burnley.

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Obituary.

MR. J. C. HEALD.

Mr. John Claypole Heald, M.A., solicitor, head of the firm of Messrs. Heald & Son, of Wigan, died at his home at Southport, on Saturday, 22nd July, at the age of eighty. He was educated at Christ's College, Cambridge, and served his articles with his father, Mr. Thomas Heald, who was a former

Clerk of the Peace for Wigan, and Mayor of the Borough from 1866 to 1868. Mr. Heald was admitted a solicitor in 1883.

Parliamentary News.

Progress of Bills.

ROYAL ASSENT.

The following Bills received the Royal Assent on 4th August:—

Aberdeen Harbours (Superannuation) Order Confirmation.
Air Ministry (Heston and Kenley Aerodromes Extension).
Appropriation.
British Overseas Airways.
Building Societies.
Cotton Industry (Reorganisation).
Dunbartonshire County Council (Kirkintilloch Street Improvement) Order Confirmation.
Folkestone Water.
Isle of Man (Customs).
Lanarkshire County Council Order Confirmation.
London Building Acts (Amendment).
London County Council (General Powers).
London County Council (Improvements).
London Gas Undertakings (Regulations).
Metropolitan Water Board.
Ministry of Health Provisional Order Confirmation (Bethesda).
Ministry of Health Provisional Order Confirmation (Bradford).
Motherwell and Wishaw Electricity etc. Order Confirmation.
Public Health (Coal Mine Refuse).
Riding Establishments.
Senior Public Elementary Schools (Liverpool).
Sheffield Corporation.
War Risks Insurance.
West Gloucestershire Water.

House of Lords.

Solicitors (Disciplinary Committee) Bill.
Read First Time. [3rd August.
Water Undertakings Bill.
Read Third Time. [3rd August.

House of Commons.

Solicitors (Disciplinary Committee) Bill.
Read Third Time. [2nd August.
Water Undertakings Bill.
Read First Time. [4th August.

Rules and Orders.

THE RULES OF THE SUPREME COURT (No. 1), 1939. S.R. & O., 1939, No. 804/L.9. Price 2d. net.

THE COUNTY COURT (No. 1) RULES, 1939. S.R. & O., 1939, No. 815/L.11. Price 2d. net.

THE WORKMEN'S COMPENSATION RULES, 1939. DATED JULY 28, 1939.

1. In these Rules "the principal Rules" means the Workmen's Compensation Rules, 1926, as amended.*

2. In paragraph (1) of Rule 38 of the principal Rules the words "and to any person not being a master, seaman or apprentice to the sea-service or the sea-fishing service, employed on board any such ship as in section 35 of the Act mentioned, if he is so employed for the purposes of the ship or of any passengers or cargo or mails carried by the ship who are workmen within the meaning of the Act" shall be omitted.

3. In the Schedule to Rule 91B of the principal Rules the following addition shall be made as indicated in the following table:—

First Column.	Second Column.	Third Column.
New Zealand.	The Registrar of the Court of Arbitration, Wellington, New Zealand.	The Clerk of Awards, Court of Arbitration, Wellington, New Zealand.

* S.R. & O. 1926 (No. 448) p. 829; for amds. see S.R. & O. 1927 (Nos. 392 and 393) pp. 747-8; 1929 (Nos. 9 and 267) p. 865; 1930 (Nos. 385 and 1002) pp. 1011-2; 1931 (Nos. 411 and 1053) pp. 752-3; 1932 (No. 910) p. 900; 1933 (No. 75) p. 1320; 1934 (Nos. 707, 708 and 1347) II, pp. 743-7; and 1938 (No. 687) II, p. 3447.

4. These Rules may be cited as the Workmen's Compensation Rules, 1939, and the Workmen's Compensation Rules, 1926, as amended, shall have effect as further amended by these Rules.

We hereby submit these Rules to the Lord Chancellor.
S. A. Hill Kelly. A. R. Kennedy.
T. Mordaunt Snagge. Austin Jones.
William Procter.

I allow these Rules, which shall come into force on the 1st day of September, 1939.

Dated the 28th day of July, 1939.

Maugham, C.

Legal Notes and News.

Honours and Appointments.

The King has appointed by Letters Patent under the Great Seal Commissioners for the care and custody of the Great Seal of the Realm during any absence of Lord Maugham, the Lord Chancellor, from the United Kingdom. The Commissioners are:—

LORD ONSLOW, Chairman of Committees of the House of Lords.

Sir WILFRID GREENE, Master of the Rolls.

Sir BOYD MERRIMAN, President of the Probate, Divorce, and Admiralty Division.

Mr. Justice CASSELS and Mr. Justice HALLETT.

The following appointments have been approved by the Directors of the London Midland and Scottish Railway Company:—

Mr. R. P. HUMPHRYS, Solicitor Assistant (General), Euston, to be Assistant Solicitor, Euston.

Mr. N. TURNBULL, Solicitor Assistant, Euston, to be Senior Conveyancing Assistant, Euston.

Mr. J. L. TRUSCOTT, late of the Divorce Registry, Somerset House, has been appointed Clerk of the Rules of the Divorce Division in succession to Mr. Stewart Chapple, who has retired.

Notes.

It was announced last week that the Lord Chancellor and Lady Maugham were sailing for Canada and that they expected to be away for about six weeks. Commissioners for the Great Seal during the absence of Lord Maugham have been appointed by the King, and a notice to that effect appears above under "Appointments."

H.M. LAND REGISTRY.

NOTE ON

LAND REGISTRATION FEE ORDER, 1939.

The Land Registration Fee Order, 1939, amends the Land Registration Fee Order, 1930, in the following ways as from the 14th August, 1939.

FIRST REGISTRATIONS.

(1) It confines the fees prescribed for first registrations by the 1930 Fee Order (i.e. scale No. 1) to first registrations in the compulsory areas.

(2) It introduces a new and increased scale, No. 1A, for first registrations in the non-compulsory areas.

DEALINGS.

(3) It substitutes a new and, at values between £500 and £10,000, a slightly increased scale No. 4, for dealings with registered land in the compulsory areas.

(4) It introduces a new and at most values a more stiffly increased scale, No. 4A, for dealings with registered land in the non-compulsory areas.

ABATEMENTS.

(5) It provides that any abatement of fees applicable under the 1930 Fee Order must be claimed at the same time as application is made for registration.

The result of these amendments is that, except for first registrations in the non-compulsory areas, the fees remain materially lower than the pre-war fees; for first registrations under £2,000 in value and dealings in the compulsory areas they remain much lower.

TABLES.

Tables have been added to the 1939 Fee Order, as published by H.M. Stationery Office, price 3d. (post free, 3½d.), in which the fees for first registrations and for dealings in both compulsory and non-compulsory areas are worked out to cover all values up to £10,000 and at representative values up to £100,000, the maximum for fee purposes.

[An explanatory article on the new Fee Order by the Chief Land Registrar appears at p. 631 of this issue.—ED., *Sol. J.*]

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 24th August 1939.

	Div. Months.	Middle Price 9 Aug. 1939.	Flat Interest Yield.	Approximate Yield with redemption
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	101½	£ s. d. 3 18 10	£ s. d. 3 17 6
Consols 2½%	JAJO	66½	3 15 2	—
War Loan 3½% 1952 or after ..	JD	91½	3 16 3	—
Funding 4% Loan 1960-90	MN	105	3 16 2	3 13 2
Funding 3% Loan 1959-69	AO	91½	3 5 7	3 9 2
Funding 2½% Loan 1952-57	JD	90½	3 0 9	3 9 4
Funding 2½% Loan 1956-61	AO	84½	2 19 4	3 10 11
Victory 4% Loan Av. life 21 years	MS	105	3 16 2	3 13 2
Conversion 5% Loan 1944-64	MN	109½	4 11 6	2 10 10
Conversion 3½% Loan 1961 or after	AO	92½	3 15 8	—
Conversion 3% Loan 1948-53	MS	95½	3 2 8	3 7 9
Conversion 2½% Loan 1944-49	AO	95½	2 12 4	3 0 7
National Defence Loan 3% 1954-58	JJ	93½	3 4 2	3 9 4
Local Loans 3% Stock 1912 or after	JAJO	78½	3 16 8	—
Bank Stock	AO	311	3 17 2	—
Guaranteed 2½% Stock (Irish Land Act) 1933 or after	JJ	73½	3 14 10	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	80	3 15 0	—
India 4½% 1950-55	MN	107	4 4 1	3 14 2
India 3½% 1931 or after	JAJO	84	4 3 4	—
India 3% 1948 or after	JAJO	71	4 4 6	—
Sudan 4½% 1939-73 Av. life 27 years	FA	106	4 4 11	4 2 6
Sudan 4% 1974 Red. in part after 1950	MN	103½	3 17 4	3 12 3
Tanganyika 4% Guaranteed 1951-71	FA	103	3 17 8	3 13 4
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	102½	4 7 10	3 8 7
Lon. Elec. T. F. Corp'n. 2½% 1950-55	FA	85½	2 18 6	3 14 4
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	95½	4 3 9	4 5 4
Australia (Commonw'th) 3% 1955-58	AO	78½	3 16 5	4 14 9
*Canada 4% 1953-58	MS	106xd	3 15 6	3 9 0
Natal 3% 1929-49	JJ	94	3 3 10	3 16 0
New South Wales 3½% 1930-50 ..	JJ	89	3 18 8	4 16 3
New Zealand 3% 1945	AO	89½	3 7 0	5 5 4
Nigeria 4% 1963	AO	105½	3 15 10	3 13 0
Queensland 3½% 1950-70	JJ	86	4 1 5	4 6 10
South Africa 3½% 1953-73	JD	95	3 13 8	3 15 3
Victoria 3½% 1929-49	AO	90	3 17 9	4 15 8
CORPORATION STOCKS				
Birmingham 3% 1947 or after ..	JJ	78	3 16 11	—
Croydon 3% 1940-60	AO	89	3 7 5	3 15 4
Essex County 3½% 1952-72	JD	96½	3 12 6	3 13 9
Leeds 3% 1927 or after	JJ	77	3 17 11	—
Liverpool 3½% Redeemable by agreement with holders or by purchase ..	JAJO	90	3 17 9	—
London County 2½% Consolidated Stock after 1920 at option of Corp. MJSD		63xd	3 19 4	—
London County 3% Consolidated Stock after 1920 at option of Corp. MJSD		75½xd	3 19 6	—
Manchester 3% 1941 or after	FA	76½	3 18 5	—
Metropolitan Consd. 2½% 1920-49 ..	MJSD	93½xd	2 13 6	3 5 5
Metropolitan Water Board 3% "A" 1963-2003	AO	80½	3 14 6	3 16 10
Do. do. 3% "B" 1934-2003	MS	80xd	3 15 0	3 16 10
Do. do. 3% "E" 1953-73	JJ	90½	3 6 4	3 9 7
*Middlesex County Council 4% 1952-72	MN	104	3 16 11	3 12 3
* Do. do. 4½% 1950-70	MN	107	4 4 1	3 14 3
Nottingham 3% Irredeemable	MN	77	3 17 11	—
Sheffield Corp. 3½% 1968	JJ	97	3 12 2	3 13 4
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture ..	JJ	97½	4 2 1	—
Gt. Western Rly. 4½% Debenture ..	JJ	105	4 5 9	—
Gt. Western Rly. 5% Debenture ..	JJ	114½	4 7 4	—
Gt. Western Rly. 5% Rent Charge ..	FA	110½	4 10 6	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	105½xd	4 14 9	—
Gt. Western Rly. 5% Preference ..	MA	87½xd	5 14 3	—
Southern Rly. 4% Debenture ..	JJ	97½	4 2 1	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	102½	3 18 1	3 16 8
Southern Rly. 5% Guaranteed ..	MA	107½xd	4 13 0	—
Southern Rly. 5% Preference ..	MA	90½xd	5 10 6	—

* Not available to Trustees over par.

† In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.

